
FOREIGN OWNERSHIP OF AIRLINE COMPANIES

Authors:

André de Almeida

almeida@almeidalaw.com.br

Natalie Yoshida

nayoshida@almeidalaw.com.br**Abstract:**

Current Brazilian crisis is adding pressure to policymakers to remove foreign ownership limitation in domestic airline companies.

The limitation of foreign capital in Brazilian airline companies arose many decades ago, when protecting the domestic market was part of a strategy of economic development.

According to the Brazilian Aeronautical Code Act 7.565 of 19 December 1986, currently in force, an airline company shall only operate in the Brazilian market if it holds the relevant permit and complies with the following requirements:

- To be headquartered in Brazil;
- At least 4/5 of the voting shares shall be held by Brazilians;
- To be managed exclusively by Brazilians.

However, in an interconnected globalized world, such restriction barriers the engagement of new competitors in the sector as well as hampers the development of existing companies.

As a result, the pressure of airline companies over Brazilian policymakers in order to obtain flexibility in what regards participation of foreign capital in the sector has increased significantly.

Last year, the Congress considered a proposal to increase the foreign ownership limit to 49 percent, but such amendment to Act 7.565 never passed.

Nevertheless, due to the recent depression and strong crisis facing internal economy, President Dilma Roussef is considering reviewing the restriction.

A bill of law to remove the current restriction in the foreign ownership of airlines companies has not been proposed yet. When proposed, it will have to be previously approved by the National Congress. The President will have the discretion to allow foreign groups to own as much as 100 percent of local airlines.

Within the same trend (but probably with less flexibility than expected by foreign investors), the President is also contemplating opening up the capital of Infraero, the state-run company that controls most of Brazilian airports.

The market has also given strong signals of the opening of the sector. Two of the biggest operators in Brazil have already been partially acquired by overseas corporations. Gol has Delta Air Lines and Air France-KLM Royal Dutch Airlines among its shareholders with 6.1 percent and 1.5 percent stakes respectively. TAM resorted to a complex two-tier ownership structure and merged with Chile-based Latam Airlines Group.

Additionally, it is known that stakes in a corporation are not the only way to control a company and it is likely that airlines corporations

in Brazil have already been run from abroad through confidential agreements.

Despite the crisis that impacts Brazilian economy, the airline sector is well-established. Brazil owns the third biggest internal airline market in the world, only behind USA and China, and forecasts from the Association of Brazilian Airlines – ABEAR estimate 109 percent growth of passengers and 58 percent growth of cargo flights from 2012 to 2020. That represents an addition of BRL 146 billion to gross national product.

The limitation of foreign participation in airlines company was built in a different historic period, when there were several reasons to restrict the entry of operators from overseas. Nowadays, the opening of the national market would increase those prospected figures and would help to speed up the development of the sector through the input of assets, foreign expertise and importation of specialized professionals.

Finally, it is matter of time for the government to review its position and accept the rules of a globalized economy.

ALMEIDA ADVOGADOS remains at your disposal to clarify any questions regarding the limitation of foreign ownership in airline companies, pursuant to Brazilian legislation, as well as to render the assistance required to perform airlines activities and/or to invest in the sector in Brazil.